Supreme Court, U.S.
FILED
SEP 1 1995
CLERK

No. 95-47

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

THE CLASS OF 48+1 AND THE INTERVENOR PLAINTIFFS, SUCCESSORS IN INTEREST TO MITCHELL G. KING, JR.,
Petitioners,

v.

MILTON GREENBLATT, M.D., LESLIE TAYLOR, CHARLES W. GAUGHAN AND M.C.I. BRIDGEWATER,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

REPLY BRIEF FOR THE PETITIONERS

JOHN F. BATTER, III
Counsel of Record
ROBERT D. KEEFE
ANTHONY A. SCIBELLI
Hale and Dorr
Sixty State Street
Boston, MA 02109
(617) 526-6000

DAVID R. GEIGER
JEFFREY S. FOLLETT
Foley Hoag & Eliot
One Post Office Square
Boston, MA 02109
Counsel for Petitioners

TABLE OF CONTENTS

Page

Table of Authorities.....ii

Statement of the Case.....4

I. THE PETITION IS NOT PREMATURE.....6

II. THE FIRST CIRCUIT'S DECISION RAISES A CLEAR ISSUE UNDER THE SUPREMACY CLAUSE.....7

III. THE FIRST CIRCUIT'S DECISION DIRECTLY CONFLICTS WITH RUFO.....8

IV. THE FIRST CIRCUIT'S DECISION IS BASED ON AN ERRONEOUS ASSUMPTION OF LAW.....9

V. THE FIRST CIRCUIT'S DECISION WILL CHILL SETTLEMENT.....10

Conclusion.....10

Appendix A.....App. 1

TABLE OF AUTHORITIES

CASES

Pearson v. Fair, C.A. No. 81-3219.....2

Rufo v. Inmates of Suffolk County Jail, 502 U.S 367 (1992).....6,7,8,9

Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n, 443 U.S. 658 (1978).....9

STATUTES

Massachusetts General Laws, Chapter 123A.....2

1993 Massachusetts Acts, Chapter 489.....4,5

Fed. R. Civ. P. 60(b).....10

Fed. R. Civ. P. 71.....5

No. 95-47

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

THE CLASS OF 48+1 AND THE INTERVENOR PLAINTIFFS, SUCCESSORS IN INTEREST TO MITCHELL G. KING, JR.,
Petitioners,

v.

MILTON GREENBLATT, M.D., LESLIE TAYLOR, CHARLES W. GAUGHAN AND M.C.I. BRIDGEWATER,
Respondents.

REPLY BRIEF FOR THE PETITIONERS

The respondents disingenuously focus on the individuals who comprise the petitioners in this case, in an attempt to suggest that the petitioners lack standing to file their petition for certiorari. In fact, the forty-eight (48) individuals who comprise the Class of 48+1, and each of the two (2) current Intervenor Plaintiffs, are residents at the Treatment Center who were explicitly allowed by the district court to challenge the respondents' attempt to modify the Consent Decree. The petitioners were allowed to oppose modification because the Consent Decree impacts virtually every aspect of day-to-day existence at the Treatment Center, and that Decree affords the petitioners significant federal constitutional

protections.[1]

In appointing counsel to represent the Class of 48+1, the district court explicitly noted that the issues raised by the proposed modification of the Consent Decree, "are common to the entire general population of the Treatment Center, most of whom are not represented by counsel." (C.A. App. 90). In its order of appointment of counsel, the district court also noted that 1993 Massachusetts Acts, Chapter 489 (Chapter 489), which had not yet been enacted, "alters greatly the structure and operation of the Treatment Center." (C.A. App. 88).

---

1 The two current Intervenor Plaintiffs (Albert Gagne and Calvin Tate) are formal parties to this action. The Intervenor Plaintiffs were the plaintiffs in *Pearson v. Fair*, C.A. No. 81-3219, which was brought to enforce the Consent Decree and a Supplemental Consent Decree entered in this case. The defendants in *Pearson*, who included successors to the original defendants in this case, moved to dismiss *Pearson* on the ground that the plaintiffs lacked standing. The district court denied that motion on July 8, 1982, and the defendants did not appeal from that decision or raise the issue on review. The *Pearson* plaintiffs formally moved to intervene as plaintiffs in *this* action on November 22, 1988. The district court granted that motion on December 9, 1988. (C.A. App. 4). As the respondents acknowledge (Br. in Opp. 6), the courts subsequently have treated the *Pearson* plaintiffs as parties in *King* for all purposes. *See, e.g., In re Pearson*, 990 F.2d 653, 657 (1st Cir. 1993).

Respondents suggest that Mr. Tate was not among the patients permitted to intervene in 1988. (Br. in Opp. 6). This is not so. By order of the district court, the complaint in *Pearson* was amended by adding Mr. Tate as a plaintiff on May 27, 1988, more than six months *before* the plaintiffs in *Pearson* intervened in this case.

Despite their emphasis on the contention that the petitioners are not actual parties to this case, it is clear that the district court and the Court of Appeals for the First Circuit ("the First Circuit") recognized that the petitioners, and indeed, all residents of the Treatment Center, have standing to oppose modification of the Consent Decree.[2] That is now the law of the case. Respondents did not challenge petitioners' standing in either the district court or the First Circuit, and their attempt to manufacture a jurisdiction question at this late date fails.[3]

---

2 The actual order accompanying the First Circuit's decision is attached hereto as Appendix A.

3 Indeed, as noted earlier, the Intervenor Plaintiffs are formal parties to this case. Moreover, the district court's order of appointment of counsel can be interpreted as effectively allowing the Class of 48+1 to intervene with respect to opposing modification of the Consent Decree. (C.A. App. 90).

STATEMENT OF THE CASE

In their opposition, the respondents make several inaccurate statements. First, the respondents incorrectly state that the Amended Complaint in this case did not allege that Massachusetts Department of Correction ("DOC") control with respect to management and treatment of the patients violated a federal right. (Br. in Opp. 3). This is patently wrong. The Amended Complaint explicitly alleges that DOC officers and supervisors improperly sequestered Mr. King and deprived him of therapy in violation of his federal and constitutional rights. (Amended Complaint ¶¶ 15, 17; C.A. App. 19-20). Indeed, as respondents correctly note in their opposition, the Amended Complaint did not seek relief under state law. (Br. in Opp. 4).

Second, contrary to respondents' assertion, the Consent Decree did not simply "reiterate" existing Massachusetts General Laws, (Chapter 123A). The Consent Decree is much broader than Chapter 123A, and it affords the patients critical protections designed to vindicate their federal and constitutional rights. For instance, the Consent Decree provides that the patients will be held in the, "least restrictive conditions necessary to achieve the purposes of commitment." (C.A. App. 39). This provision was not in then existing Chapter 123A, and it provides significant additional rights that affect

virtually every aspect of the patients' existence at the Treatment Center. Further, while the Consent Decree provides that the Treatment Center shall be "treated as" a Massachusetts Department of Mental Health ("DMH") facility, the statute simply referred to the Treatment Center as being, "at a correctional facility approved by the commissioner of correction." (C.A. App. 38).[4]

---

4 While the respondents are correct that this case is not a formal class action, the relief sought, including injunctive relief, was for the benefit of all the patients, and the patients are entitled to sue to enforce those benefits. *See* Fed. R. Civ. P. 71.

I. THE PETITION IS NOT PREMATURE.

Although it is true that the district court has now granted DOC administrative control of the Treatment Center, and that petitioners have appealed from that decision, that appeal will deal only with the *second prong* of the two-part test for modification of a consent decree set forth in *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 383-84 (1992), *and not the first prong*. As a result, even if the First Circuit reverses the district court's finding under the second prong of *Rufo*, its prior decision under the first prong, the subject of this petition, will remain in effect and will be binding precedent.

Under these circumstances, immediate review by this Court is both fair and efficient. The respondents concede that this Court's jurisdiction does not require the decision below to be final. The First Circuit has rendered a published opinion that directly conflicts with this Court's prior rulings and maneuvers the parties into litigating the second prong of *Rufo's* two-part test, perhaps unnecessarily. Immediate review by this Court may forestall extensive additional litigation. Moreover, it may minimize the serious and chilling effect the First Circuit's decision is likely to have on settlements in other federal litigation. For all of these reasons, this Court

should review the First Circuit's decision as soon as possible.[5]

II. THE FIRST CIRCUIT'S DECISION RAISES A CLEAR ISSUE UNDER THE SUPREMACY CLAUSE.

The respondents adopt the First Circuit's position that the terms of a consent decree fall along a "spectrum" depending on whether or not they are "directly mandated" by the Constitution. (Br. in Opp. 12; App. 8). This analysis directly conflicts with the *Rufo* test. *Rufo* did not adopt a "sliding scale" approach, whereby less important terms receive less protection from change. In *Rufo,* this Court held that if a term is arguably related to the vindication of a constitutional right, a two-prong test for modification applies. *Rufo*, 502 U.S. at 383, n.7. While an analysis of whether terms are "directly mandated" by the Constitution *may* be relevant under the threshold question of whether the consent decree is "arguably related" to the vindication of a constitutional right, it is not part of the two-prong test for modification.[6]

---

5 In an effort to meet the second *Rufo* prong, the respondents have submitted a proposed management plan for the Treatment Center, a document of more than 130 pages, supported by more than 30 policies. Even without the benefit of discovery, the petitioners filed a 103-page opposition to this plan outlining numerous constitutional and decretal violations. It would be wasteful to have still further proceedings concerning the plan if the first *Rufo* prong was wrongly decided.

6 Here the respondents concede that the Consent Decree is arguably related to the vindication of a constitutional right and the First Circuit expressly acknowledged that the terms of the Consent Decree, "were clearly, not just arguably, related to the constitutional remedy provided by the decrees." (App. 8).

Further, once the threshold inquiry is passed, the first prong of the *Rufo* test mandates that the court decide whether the purported change in law or fact is "significant" by comparing it with the law or facts underlying the consent decree. That does not permit the court to engage in an ambiguous exercise to decide whether the terms of the consent decree are "directly mandated" by the Constitution. In fact, few terms of any decree or statute will be "directly mandated" by the Constitution, and that kind of inquiry is ultimately an irrelevant and futile exercise.

III. THE FIRST CIRCUIT'S DECISION DIRECTLY CONFLICTS WITH RUFO.

The respondents engage in a narrow and artificial reading of the *Rufo* decision in an attempt to argue that *Rufo* does not conflict with the First Circuit's unwarranted emphasis on federalism concerns. In *Rufo*, this Court explicitly held that no deference should be given to government officials under the first prong of the two part test for modification. *Rufo*, 502 U.S. at 392, n. 14. Then, to clarify that no deference should be given to federalism concerns, the Court went further and found that, "[o]nce a court has determined that a modification is warranted, we think that *principles of federalism* and common sense require the court to give significant weight to the views of local government officials who must

implement modification." *Id.* (emphasis added). By explicitly referring to the application of "principles of federalism" under the second prong of the two-part test, this Court indicated that it is inappropriate to defer to federalism concerns under the first prong. This standard applies not merely to "local" officials, but to all persons, entities and concepts encompassed within the term "principles of federalism." *Id.*

IV. THE FIRST CIRCUIT'S DECISION IS BASED ON AN ERRONEOUS ASSUMPTION OF LAW.

Respondents argue that courts cannot allocate functions among state agencies regardless of state law. That is simply wrong. As the First Circuit has acknowledged previously, the Consent Decree was designed to protect the patients' constitutional rights. (App. 10). In short, the Consent Decree is a federal court order enforcing federal constitutional rights, and the district court that entered the Decree had full authority to vindicate those rights, regardless of existing state law. *See Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n*, 443 U.S. 658, 695 (1978).[7]

---

7 The respondents also argue that public officials cannot make binding agreements to restructure state government. (Br. in Opp. 16). Again, this ignores the fact that the Consent Decree, while agreed to by the parties, is a federal court order enforcing federal constitutional rights.

V. THE FIRST CIRCUIT'S DECISION WILL CHILL SETTLEMENT.

The respondents' claim that the First Circuit's decision will not have any effect on settlements ignores the obvious fact that litigants will be reluctant to enter into agreements when one party to the agreement can alter terms at will. Although it is true that a litigated judgment is always subject to modification under Fed. R. Civ. P. 60(b), that Rule does not allow a state to unilaterally change a judgment simply by passing legislation. Yet, states now have the ability to do precisely that under the First Circuit's decision, rather than having to subject their proposed changes to searching, independent federal review under Fed. R. Civ. P. 60(b) and this Court's *Rufo* test. Such a result will erode the efficacy of consent decrees and discourage settlements.

CONCLUSION

For the foregoing reasons and those given in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted,

John F. Batter, III
Counsel of Record

Robert D. Keefe
Anthony A. Scibelli
Hale and Dorr
60 State Street
Boston, MA 02109

David R. Geiger
Jeffrey S. Follett
Foley, Hoag & Eliot
1 Post Office Square
Boston, MA 02109
Counsel for Petitioners

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

NO. 94-1751

THE CLASS OF 48+1 AND THE INTERVENOR
MITCHELL G. KING, JR.,

Plaintiff - Appellee

v.

MILTON GREENBLATT, LESLIE TAYLOR, CHARLES W. GAUGHAN AND M.C.I. BRIDGEWATER,

Defendants - Appellants

ORDER OF COURT

Entered: April 6, 1995

The above captioned matter is remanded to the District Court for further proceedings in accordance with the opinion issued this date. The District Court is to report to this court when the further proceedings are completed.

This court will retain appellate jurisdiction.

By the Court:

/s/ Francis P. Scigliano
Clerk

cc: William L. Pardee, Esq.
Anthony A. Scibelli, Esq.